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EXAMINER

CHANKONG, DOHM

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

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Technology Center 2100

Application Number: 09/891,751
Filing Date: June 26, 2001
Appellant(s): MCINTYRE ET AL.

Frank Pincelli
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/3/2007 appealing from the Office action mailed 8/22/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20020111813	Capps	2-2001
20020055955	Lloyd-Jones	4-2001
20040008872	Goldberg	7-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. The text of the rejections for claims 4, 10, 11, 12, 20-23 and 29-30 is found in the Office Action filed August 9, 2005. The text of the rejection for claim 7 is found in the Office Action filed March 27, 2006.

2. Claims 4, 7, 10, 12, 20-22 and 29-30 are rejected under 35 U.S.C § 103(a) as being unpatentable over Capps, U.S Patent Publication No. 2002|0111813 ["Capps"], in view of Lloyd-Jones, U.S Patent Publication No. 2002|0055955 ["Lloyd-Jones"], in further view of Goldberg, U.S Patent Publication 2004|0008872.

3. As to claim 4, Capps discloses a method for automatically forwarding a digital media file by a first party to a second party over a communication network, said digital media file having at least one digital image file, comprising the steps of:

automatically analyzing a digital image media file at a first party for determining if a

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portion of said at least one digital image file matches an image content identifier, said image content identifier having an associated electronic address of a second party [0011, 0012, 0014 where Capps discloses analyzing an image to identify a person within the image].

While Capps does not explicitly disclose an image content identifier, such an identifier is obvious in light of his person-identifying (matching) functionality. Furthermore, Goldberg discloses utilizing a image content identifier (facial ID) to identify people in images based on their ID [0142-0144]. It would have been obvious to one of ordinary skill in the art to have reasonably inferred that such an ID would be utilized in Capps' facial recognition system so as to properly identify the persons within an image.

Capps discloses being able to communicate with the identified second party using the associated electronic address [0066] but does not explicitly disclose automatically forwarding said digital image from said first party to said electronic address of said second party over said communication network if said image content identifier matches a portion of said image.

4. Also, it should be noted that Capps discloses the claimed invention except for automatically forwarding the image to the identified second party. It would have been obvious to one of ordinary skill in the art at the time the invention was made to automate Capps action button process so that communications to the second party are done automatically (instead of having the user press the button to initiate communications), since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has been accomplished the same result involves only routine skill in the art.

See *In re Venner*, 120 USPQ 192.

Furthermore, Lloyd-Jones discloses automatically forwarding an image from a first party to an electronic address of a second party [0039]. It would have obvious to modify Capps' email so that it included the scanned image when it is sent to the second party. Not only is this process (the act of attaching an image to an email) well known and routine in the art, but Lloyd-Jones discloses that such functionality allows multiple images associated with a second party to be sent more easily [see Lloyd-Jones, 0005].

5. As to claim 7, Capps discloses a method for identifying images by a computer for communication of said images over a communication network to a designated remote location, comprising the steps of:

automatically analyzing a digital image [0052]; and
identifying a feature within said digital image by said computer using pre-established image content identifier having an associated electronic address at a first location [0052, 0053].

Capps discloses transmitting an email to a second remote location over a communication network to a second remote location [0004, 0058 where : an access point, such as email address, is associated with the identified person] but does not explicitly disclose automatically transmitting said image to a second remote location over a communication network for displaying or storing said image based on identifying said feature within said image.

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6. Capps discloses the claimed invention except for automatically forwarding the image to the identified second party. It would have been obvious to one of ordinary skill in the art at the time the invention was made to automate Capps action button process so that communications to the second party are done automatically (instead of having the user press the button to initiate communications), since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has been accomplished the same result involves only routine skill in the art.

Furthermore, Lloyd-Jones discloses automatically forwarding an image from a first party to an electronic address of a second party [0039]. It would have obvious to modify Capps' email so that it included the scanned image when it is sent to the second party. Not only is this process (the act of attaching an image to an email) well known and routine in the art, but Lloyd-Jones discloses that such functionality allows multiple images associated with a second party to be sent more easily [see Lloyd-Jones, 0005].

7. As to claim 10, Capps discloses a system for automatically sharing of images over a communication network, comprising:

obtaining at least one image identifier comprising an image content identifier and an associated electronic address [0052, 0053]; and

automatically analyzing digital images at a first location different from said associated electronic address for determining if the said image content identifier substantially matches a portion of said images [0052, 0053, 0054].

Capps discloses transmitting an email to a second remote location over a communication network to a second remote location when said images substantially match said image content identifier but does not explicitly disclose automatically forwarding said images to a second remote location over a communication network to said associated electronic address.

8. Capps discloses the claimed invention except for automatically forwarding the image to the identified second party. It would have been obvious to one of ordinary skill in the art at the time the invention was made to automate Capps action button process so that communications to the second party are done automatically (instead of having the user press the button to initiate communications), since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has been accomplished the same result involves only routine skill in the art. See *In re Venner*, 120 USPQ 192.

Furthermore, Lloyd-Jones discloses automatically forwarding an image from a first party to an electronic address of a second party [0039]. It would have obvious to modify Capps' email so that it included the scanned image when it is sent to the second party. Not only is this process (the act of attaching an image to an email) well known and routine in the art, but Lloyd-Jones discloses that such functionality allows multiple images associated with a second party to be sent more easily [see Lloyd-Jones, 0005].

9. As to claim 12, it does not teach or further define over the limitations recited in claim 10. Therefore, claim 12 is also rejected for the same reasons as set forth in claim 10, supra.

10. As to claim 20, as it is a computer software products that perform the steps of the methods of claim 7, it does not teach or further define over the limitations recited in claim 7. Therefore, claim 20 are rejected for the same reasons as set forth in claim 7, supra.

11. As to claim 21, as it is a computer software products that perform the steps of the method of claim 4, they do not teach or further define over the limitations recited in claim 4. Therefore, claim 21 is rejected for the same reasons as set forth in claim 4, supra.

12. As to claim 22, as it is a computer software products that perform the steps of the method of claim 10, it does not teach or further define over the limitations recited in claim 10. Therefore, claim 22 is rejected for the same reasons as set forth in claim 10, supra.

13. As to claim 29, Capps discloses a method for automatically forwarding a digital media file by a first party to a second party over a communication network, said digital media file having at least one digital image file, comprising the steps of:

automatically analyzing a digital image media file for determining if a portion in said digital image file matches a content identifier at a first location, said image content identifier having an associated electronic address remote from said first location;

While Capps discloses sending an email to a second party's associated electronic address, he does not explicitly disclose automatically forwarding said digital image from said first location to said electronic address over said communication network if said image

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content identifier is present nor does he disclose automatically updating said content identifier to reflect a change in said content identifier.

14. Capps discloses the claimed invention except for automatically forwarding the image to the identified second party. It would have been obvious to one of ordinary skill in the art at the time the invention was made to automate Capps action button process so that communications to the second party are done automatically (instead of having the user press the button to initiate communications), since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has been accomplished the same result involves only routine skill in the art. See *In re Venner*, 120 USPQ 192.

Furthermore, Lloyd-Jones discloses automatically forwarding an image from a first party to an electronic address of a second party [0039]. It would have obvious to modify Capps' email so that it included the scanned image when it is sent to the second party. Not only is this process (the act of attaching an image to an email) well known and routine in the art, but Lloyd-Jones discloses that such functionality allows multiple images associated with a second party to be sent more easily [see Lloyd-Jones, 0005].

15. In a similar field of invention (facial recognition) Goldberg discloses automatically updating said content identifier to reflect a change in said content identifier [0142, 0143, 0144]. It would have been obvious to one of ordinary skill in the art to modify Capps facial recognition program with the automatic facial ID updating system disclosed by Goldberg. As Goldberg suggests, by updating (or "converging") multiple iterations of the facial ID, the

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process of identifying or matching a person to his facial ID becomes more precise because the facial ID has become more accurate. Such functionality would especially be useful in Capps' facial recognition program as it would increase speed and efficiency of the system.

16. As to claim 30, Capps discloses said content identifier is the appearance of an individual [0052] but does not disclose that said change comprises a change in the appearance of said individual.

17. Goldberg discloses updating a content identifier to reflect a change, said change comprising a change in the appearance of the individual [0142, 0143, 0144]. It would have been obvious to one of ordinary skill in the art to modify Capps facial recognition program with the automatic facial ID updating system (converging the changes of the different images) disclosed by Goldberg. As Goldberg suggests, by updating (or "converging") multiple iterations of the facial ID, the process of identifying or matching a person to his facial ID becomes more precise because the facial ID has become more accurate. Such functionality would especially be useful in Capps' facial recognition program as it would increase speed and efficiency of the system.

18. Claim 11 is rejected under 35 U.S.C § 103(a) as being unpatentable over Capps, Lloyd-Jones and Goldberg, in view of Davis et al, U.S Patent Publication 2002/0001395 ["Davis"].

19. Capps does not explicitly disclose the system wherein said images are forwarded to a fulfillment provider for providing goods and/or services with respect to said at least one digital image file.

20. Davis discloses a system wherein said images are forwarded to a fulfillment provider for providing goods and/or services with respect to said at least one digital image file [0171, 0172, 0173, 0174]. It would have been obvious to one of ordinary skill in the art to incorporate Davis' fulfillment provider for providing imaging services to a user in Capps' photo system. One would have been motivated to perform such an implementation to increase the capability of Capps' photography system.

(10) Response to Argument

I. APPELLANT'S CHARACTERIZATION OF THE CLAIM REJECTIONS ARE INACCURATE.

Appellant inaccurately asserts that the Office Action admitted that Capps does not disclose an image content identifier [Appellant's Appeal Brief, pg. 5, ¶5]. Appellant also inaccurately asserts that Lloyd-Jones was relied upon to cure this alleged deficiency [Brief, pg. 5, ¶5]. Because these arguments are inaccurate, this section of the answer will summarize the claim rejections to correct Appellant's erroneous arguments.

The independent method claims essentially consist of two steps: (1) automatically analyzing an image at a first party for determining if a portion of said at least one digital image matches an image content identifier; and (2) the image content identifier having an associated electronic address of a second party and automatically forwarding said digital

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image from said first party to said electronic address if said image content identifier matches a portion of said image.

A. Capps and Goldberg analyzing an image to determine whether a portion of said image matches an image content identifier.

As to the first feature, the Office Action argued that while Capps does not expressly disclose the exact terms “image content identifier” such a feature was implied by Capps express disclosure of using conventional facial recognition algorithms to identify certain characteristics of a person or persons within the photograph [Capps, 0052]. Capps disclosure of using facial recognition algorithms to find characteristics of persons within a photograph is identical to Appellant’s teaching of “face recognition software” to find content identifiers within an image [Appellant’s specification, pg. 13, lines 23-32]. According to Appellant’s specification, an image content identifier can be embodied as an icon that represents a face of a user [Appellant’s specification, Figure 10a]. Thus, while Capps did not expressly disclose the exact term “content identifier”, Capps’ use of facial recognition algorithms to identify characteristics within an image strongly suggests the same functionality being claimed by Appellant.

Furthermore, Goldberg, and not Lloyd-Jones, was merely relied upon to supplement this feature in Capps. Goldberg expressly taught the concept of searching for an image content identifier to identify specific people within images [Goldberg, 0142-0144]. Based on Goldberg and Appellant’s own specification, one of ordinary skill in the art could have reasonably inferred that Capps teaching of finding characteristics based on facial recognition software is analogous to finding “content identifiers.”

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Thus, Capps teaches analyzing an image to determine whether a portion of that image matches an image content identifier. In the parlance of Capps', an image is analyzed, using facial recognition software, to determine whether any part of the image matches a face of a specific person [Capps, 0052].

B. Capps and Lloyd-Jones disclose automatically forwarding the image to the identified second party.

First, Capps discloses that characteristics within an image are associated with an electronic address, like an email address [Capps, 0053-0054]. Once a person is identified, the identified person's email address may then be associated with an action button which a user could use to contact the identified person [Capps, 0066 : "the action button may automatically address an email address to that address"]. Thus, Capps discloses that the user may select the action button in order to send an email communication to the identified person within the image. Capps does not disclose that the email is sent automatically or that the image is sent along with the email communication as claimed by Appellant.

However, since Capps discloses manually sending an email to the identified person, it would have been obvious to one of ordinary skill in the art to have automated such a process, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has been accomplished the same result involves only routine skill in the art. See In re Venner, 120 USPQ 192.

The Office Action relied upon Lloyd-Jones to supplement this conclusion and to further teach forwarding the image from a first party to the electronic address of a second party if the image content identifier matches a portion of said image. Specifically, Lloyd-Jones teaches that each person within an image can be associated with an image [Lloyd-

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Jones, 0039]. Based on identifying the person within the image, the invention sends all of the images that include the identified person to the email address of the identified person [Lloyd-Jones, 0039]. One would have been motivated to incorporate Lloyd-Jones' email functionality into Capps' system because such functionality allows multiple images associated with a second party to be sent more easily [Lloyd-Jones, 0005].

II. APPELLANT'S ARGUMENTS SHOULD BE CONSIDERED UNPERSUASIVE BECAUSE THE CITED REFERENCES TEACH ALL THE LIMITATIONS AS CLAIMED.

Appellant argues that Capps fails to disclose an image content identifier having an associated electronic address of a second party [Brief, pg. 6, ¶1]. Contrary to Appellant's argument, Capps discloses this feature. Capps discloses identifying certain characteristics within an image using facial recognition algorithms; these characteristics are associated with various personal information, such as an email address of the identified person or a phone number of the identified person, stored within a database [Capps, 0053-0054]. Coupled with Goldberg's express teaching of searching for image identifiers within an image, Capps clearly teaches an image content identifier having an associated electronic address of a second party.

Appellant additionally argues that Capps does not teach a pre-established icon having an associated address for automatic forwarding of an image [Brief, pg. 6, ¶2]. It should first be noted that only claim 7 recites a "pre-established image content identifier." Appellant then confuses the issue arguing that "the associated information with content identifier is pre-established in the present invention" and that "the pre-established address is important to the present invention" [Brief, pg. 6-7]. None of the claims expressly recite a "pre-established address" or recite that the associated electronic address is pre-established.

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With respect to what is claimed, Capps does teach that the image content identifier is pre-established. Capps discloses that an image is parsed using facial recognition software to identify persons within the image. Once this graphical data representing a person is found, the data is compared to characteristics of the person which are contained in a database [Capps, 0053 : "information relevant to that (identified) person is automatically retrieved" with relevant data including an email address]. As discussed in the previous section, Capps characteristics are analogous to Applicant's claimed image content identifier. It is clear that the characteristics within the database are pre-established because they were in the database prior to the execution of the facial recognition software.

(II) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

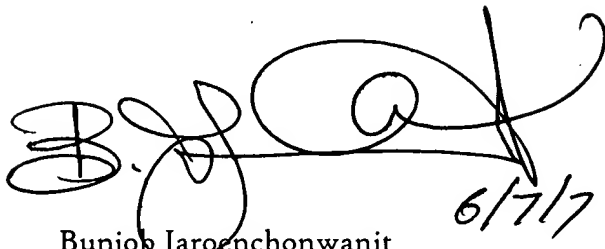
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